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8 PAUL SAPAN

9 **UNITED STATES DISTRICT COURT**
10 **CENTRAL DISTRICT OF CALIFORNIA**
11 **SOUTHERN DIVISION**

12 PAUL SAPAN,

13 Plaintiff,

14 vs.

15 THE PORTER GROUP, LLC., a Florida
16 Limited Liability Company, BRUCE R.
17 PORTER, an individual,

18 Defendants.

Case No.:

19 **COMPLAINT FOR DAMAGES,**
20 **INCLUDING PUNITIVE**
21 **DAMAGES, INTEREST AND**
22 **ATTORNEY'S FEES, AND**
23 **FOR INJUNCTIVE RELIEF**

24 **Violation(s) of Telephone**
25 **Consumer**
26 **Protection Act of 1991**
27 **Trespass to Chattel**
28 **Unfair Business Practices**

COMES NOW Plaintiff PAUL SAPAN (hereinafter referred to as
"Plaintiff") who alleges as follows:

JURISDICTIONAL ALLEGATIONS

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1. Plaintiff is, and at all times herein mentioned was, a resident of the Los Angeles, but has recently moved to the County of Orange, State of California.

2. Defendant The Porter Group, LLC. ("Porter Group") is, and at all times herein mentioned was, a Florida Limited Liability Company, doing business in the County of Los Angeles, State of California.

3. Defendant Bruce R. Porter is, and at all times herein mentioned was, an individual doing business in the County of Los Angeles, State of California.

4. This case is filed pursuant to the Telephone Consumer Protection Act of 1991, 47 U.S.C. §227 et. seq. The U.S. Supreme Court recently decided that federal courts have federal question subject matter jurisdiction over such civil actions under 28 U.S.C. §§ 1331 and 1441. *Mims v. Arrow Fin. Services, LLC*, -- U.S. --, 132 S.Ct. 740, 753 (2012). The state law claim herein arises out of a common nucleus of operative facts and is subject to supplemental jurisdiction pursuant to 28 U.S.C. § 1367.

5. At all times herein mentioned each defendant was the partner, agent and employee of each co-defendant herein and was at all times acting within the scope of such partnership, agency and employment and each defendant ratified the conduct of each co-defendant herein.

FACTUAL SUMMARY

CALLS TO MR. SAPAN'S RESIDENTIAL NUMBER (310-444-1999)

6. PAUL SAPAN received fifteen (15) prerecorded calls to his home phone number (310-444-1999) from Defendants wherein they tried to pitch their mortgage modification services on the following dates and times and using the following Caller ID ("CID") numbers:

- February 27, 2012 at 10:26am, CID 225-654-0000
- April 24, 2012 at 1:50 pm, CID 404-902-5766
- May 8, 2012 at 2:52 pm, CID 404-902-5766
- May 9, 2012 at 3:29pm, CID 404-902-5766
- January 14 2013 at 3:26pm, CID 267-498-6392
- April 29, 2013 at 2:04pm, CID 267-498-6392
- May 3, 2013 at 10:47am, CID 267-498-6392
- May 6, 2013 at 1:42pm, CID 267-498-6392
- May 10, 2013 at 12:58pm, CID 267-498-6392
- May 16, 2013 at 1:42, CID 267-498-6392
- June 10, 2013 at 12:55pm, CID 267-498-6392
- July 3, 2013 at 8:10am, CID 267-498-6392
- October 2, 2013 at 11:37am, CID 267-498-6392
- December 30, 2013 at 12:01pm, CID 661-318-8328
- February 20, 2014 at 3:07pm, CID 253-236-2618

7. Mr. Sapan's home phone has been listed on the Federal Trade Commission's "Do Not Call" registry from December 23, 2007 to the present.

8. All of the calls used the CID number, but none of the calls transmitted any Caller ID name information as required by law. 47 C.F.R. § 64.1601(e).

1 9. On or about February 27 2012, at 10:26 am, Defendants called Mr.
2 Sapan's home phone number using a Caller ID Number of 225-654-0000.

3 10. A pre-recorded message asked Mr. Sapan to press "1" for information
4 modifying his mortgage. Due to the ambiguous nature of the call, Mr. Sapan
5 pressed "1" to find out which company was behind the illegal call.
6

7 11. At this time an anonymous caller answered the phone as, "Porter
8 Group". Mr. Sapan then hung up the phone.
9

10 12. On or about April 24, 2012, at 1:50 pm, Defendants called Mr.
11 Sapan's home phone number using a Caller ID Number of 404-902-5766.
12

13 13. Mr. Sapan did not answer this call but alleges on information and
14 belief that Defendants purpose in calling him was to try to again sell their
15 mortgage modification services.
16

17 14. Unfamiliar with the phone number, Mr. Sapan conducted a Google
18 search on the telephone number.
19

20 15. The Google search showed the number on the webpage of Porter
21 Group, LLC, www.portergroup.org.
22

23 16. Subsequent alleged phone calls made on May 8, 2012 and May 9,
24 2012 used the same CID number as the second call.
25

26 17. These pre-recorded calls followed the same "press 1" format as the
27 first call received by Mr. Sapan.
28

1 18. On both calls Mr. Sapan pressed “1” for mortgage modification
2 services to confirm who was calling.

3 19. On both calls he was then connected to an anonymous caller who
4 answered the phone as “Porter Group”.
5

6 20. During the fifth call, on or about January 14, 2013 at 3:26 pm, Mr,
7 Sapan received a prerecorded message offering mortgage relief under a third new
8 CID, 267-498-6392.
9

10 21. Mr. Sapan increasingly irked by the unwarranted phone calls pressed
11 “1” suspecting a problematic trend.
12

13 22. He was once again connected to an anonymous caller who answered
14 the phone as “Porter Group”. Mr. Sapan then hung up the call.
15

16 23. The sixth call on April 29, 2013 used the same CID as the fourth, the
17 same prerecorded message and the same answer as “Porter Group” after the “press
18 1” message.
19

20 24. During the seventh call, on or about May 3, 2012 10:47 am,
21 Defendants call Mr. Sapan’s home phone using the same CID as the fifth and sixth
22 calls, 267-498-6392.
23

24 25. This seventh call used the same CID as the fourth, the same “press 1”
25 prerecorded message and the same answer as “Porter Group” after the message.
26
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28

1 26. Now that Mr. Sapan knew definitively that Porter Group was behind
2 all calls to this number, Mr. Sapan told them he was not interested and to please
3 stop calling, and then hung up the phone.
4

5 27. All subsequent calls alleged up to October 2, 2013 used the same CID
6 number as the fifth, sixth, and seventh calls
7

8 28. In each of these subsequent calls which Mr. Sapan answered,
9 Defendants used their a prerecorded “press 1” message followed by a human
10 representative who either admitted they were from Porter Group or who gave
11 information tracing back to Porter Group to pitch their mortgage modification
12 services.
13
14

15 29. In each of these subsequent calls which Mr. Sapan did not answer,
16 Plaintiff alleges on information and belief that each of these calls were made by
17 Defendants using a prerecorded message to pitch their mortgage modification
18 services.
19

20 30. During the fourteenth call, on or about December 30, 2013 at 12:01
21 pm, Defendants called Mr. Span’s home phone number (310-444-1999) using a
22 new CID number, 661-318-8328.
23
24

25 31. This fourteenth call used the same prerecorded message and the same
26 answer as “Porter Group” after the “press 1” message to sell mortgage
27 modification services as the previous calls.
28

1 32. During the fifteenth call, on or about February 20, 2014 at 3:07pm,
2 Defendants called Mr. Sapan's home phone using a new CID number, 267-498-
3 6392.
4

5 33. This fifteenth call transmitted a new prerecorded message that began
6 "On March 4th the Treasury Department", then the call claimed a new regulation
7 affected credit ratings and ended, "to reduce your mortgage rates press 1".
8

9 34. Because this call used a new CID number and a new message, Mr.
10 Sapan pressed "1" to find out who was calling him.
11

12 35. After pressing 1, Mr. Sapan was connected to someone who identified
13 himself as Robert or some other similar sounding first name Conklin "of the Porter
14 Group" and Mr. Sapan hung up immediately.
15

16
17 CALLS TO MR. SAPAN'S WIRELESS NUMBER (510-333-7473)
18

19 36. Beginning February 20, 2014 and ending March 6, 2014, Defendants
20 called Mr. Sapan's wireless cellular line (510-333-7473) eight (8) times on the
21 following dates and times and using the following CID numbers:
22

- | | |
|--|---|
| 23 • February 20, 2014 at 1:27pm,
CID 518-650-1474. | • February 28, 2014 at 10:03am,
CID 253-236-2618 |
| 24 • February 21, 2014 at 10:44am,
CID 518-650-1285 | • March 6, 2014 at 9:39am,
CID 323-429-4348 |
| 25 • February 25, 2014 at 9:40am,
CID 458-201-2305 | • March 11, 2014 at 12:40pm,
CID 773-492-2731 |
| 26 • February 27, 2014 at 10:32am,
CID 718-840-6535 | • March 11, 2014 at 2:12pm,
CID 518-650-1285 |
- 27
28

1 37. Mr. Sapan answered all of the calls above except for the February 21,
2 2014 call.

3 38. In each of these last eight (8) calls which Mr. Sapan answered,
4
5 Defendants used their a prerecorded “press 1” message followed by a human
6 representative who either admitted they were from Porter Group or who gave
7 information tracing back to Porter Group to pitch their mortgage modification
8 services.
9

10 39. In each of these last eight (8) calls which Mr. Sapan did not answer,
11
12 Plaintiff alleges on information and belief that each of these calls were made by
13 Defendants using a prerecorded message to pitch their mortgage services.
14

15 40. None of the calls complained of were introduced by a live natural
16 person as required by the California Consumer Legal Remedies Act.
17

18 41. And none of the recordings complained of identify who was calling to
19 offer these mortgage modification services as required by both federal and
20 California law.
21

22 JOINT LIANILITY OF DEFENDANTS

23 42. The Porter Group, LLC owns the website www.portergroup.org,
24 mentioned above.
25

26 43. Defendant Bruce R. Porter is designated in the Florida corporate
27 filings for The Porter Group, LLC as the sole Manager for the organization.
28

1 message without the prior express consent of the called party, unless the call is
2 initiated for emergency purposes or is exempted by rule or order of the
3 Commission under paragraph (2) (B);”
4

5 49. Defendants have called Plaintiff’s residential telephone line, using an
6 artificial or prerecorded voice to deliver a message, without Plaintiff’s express
7 permission during the statutory period of the last 4 years, pursuant to 28 U.S.C. §
8 1658. These calls are the only calls known to Plaintiff at this time and Plaintiff
9 states on information and belief, without yet having the aid of full discovery, that it
10 is quite likely that Defendant has made many more violative calls to Plaintiff’s
11 residential telephone line. These calls were not made for any emergency purpose,
12 nor were these calls exempt under subdivisions (a) and/or (c) of section 64.1200 of
13 title 47 of the Code of Federal Regulations.
14
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17 50. Subdivision (b)(3) of section 227 of title 47 of the United States Code
18 permits a private right of action in state court for violations of 47 U.S.C. §227 (b)
19 (1) (B). Plaintiff may obtain relief in the form of injunctive relief, or Plaintiff may
20 recover \$500.00 for each violation, or both. If the court finds that defendants’
21 violations were willful or knowing, it may, in its discretion, award up to three
22 times that amount.
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SECOND CAUSE OF ACTION

[Violation of Telephone Consumer Protection Act of 1991
For Fifteen (15) “Do-Not-Call” List Violations]

51. Plaintiff re alleges all paragraphs above and incorporates them herein by reference.

52. Plaintiff is bringing this action pursuant to the provisions of the Telephone Consumer Protection Act of 1991 (47 U.S.C. §227 and 47 C.F.R. §64.1200 – “TCPA”).

53. Subdivision (c) (2) of Section 64.1200 of Title 47 of the Code of Federal Regulations makes it unlawful for any person to “initiate any telephone solicitation” to “A residential telephone subscriber who has registered his or her telephone number on the national do-not-call registry of persons who do not wish to receive telephone solicitations”.

54. At all times relevant to this complaint, Plaintiff had registered his residential telephone number on the national do-not-call registry maintained by the U.S. Government.

55. Defendants have called Plaintiff’s residential telephone line for solicitation purposes during the statutory period of the last 4 years, pursuant to 28 U.S.C. § 1658. These calls are the only calls known to Plaintiff at this time and Plaintiff states on information and belief, without yet having the aid of full discovery, that it is quite likely that Defendant has made many more violative calls

1 to Plaintiff's residential telephone line. These calls were not made in error, nor did
 2 Defendant have express permission from Plaintiff to call, nor did Defendant have a
 3 personal relationship with Plaintiff. 37 C.F.R. § 64.1200 (c) (i), (ii), & (iii).
 4

5 56. Subdivision (c)(5) of section 227 of title 47 of the United States Code
 6 permits a private right of action in state court for violations the national do-not-call
 7 registry rules promulgated there under. Plaintiff may obtain relief in the form of
 8 injunctive relief, or Plaintiff may recover \$500.00 for each violation, or both. If
 9 the court finds that defendants' violations were willful or knowing, it may, in its
 10 discretion, award up to three times that amount.
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14 **THIRD CAUSE OF ACTION**

15 [Violation of Telephone Consumer Protection Act of 1991
 16 For Eight (8) Prerecorded Calls To Cell Phone]

17 57. Plaintiff re alleges all paragraphs above and incorporates them herein
 18 by reference.
 19

20 58. Plaintiff is bringing this action pursuant to the provisions of the
 21 Telephone Consumer Protection Act of 1991 (47 U.S.C. §227 and 47 C.F.R.
 22 §64.1200 – "TCPA").
 23

24 59. Subdivision (b) (1) (A) (iii) of Section 227 of Title 47 of the United
 25 States Code makes it unlawful for any person to "Make any call (other than a call
 26 made for emergency purposes or made with the prior express consent of the called
 27 party) using any automatic telephone dialing system or an artificial or prerecorded
 28

1 voice...to any telephone number assigned to a paging service, specialized mobile
2 radio service, or other radio common carrier service, or any service for which the
3 called party is charged for the call.”
4

5 60. Defendants have been calling Plaintiff’s number assigned to wireless
6 cellular phone service, using an automatic telephone dialing system or an artificial
7 or prerecorded voice, without Plaintiff’s express permission during the statutory
8 period of the last 4 years, pursuant to 28 U.S.C. § 1658. These calls are only the
9 calls known to Plaintiff at this time and Plaintiff states on information and belief,
10 without yet having the aid of full discovery, that it is quite likely that Defendant
11 has made many more violative calls to Plaintiff’s number assigned to wireless
12 cellular phone service. These calls were not made for any emergency purpose, nor
13 were these calls exempt under subdivision (c) of section 64.1200 of title 47 of the
14 Code of Federal Regulations.
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19 61. Subdivision (b)(3) of section 227 of title 47 of the United States Code
20 permits a private right of action in state court for violations of 47 U.S.C. §227 (b)
21 (1) (A) (iii). Plaintiff may recover \$500.00 for each violation, or both. If the court
22 finds that defendants' violations were willful or knowing, it may, in its discretion,
23 award up to three times that amount.
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FOURTH CAUSE OF ACTION

[Violation(s) of California Civil Code § 1770 (a) (22) (A)
For all twenty- three (23) Prerecorded Telesolicitation Calls]

62. Plaintiff re alleges all paragraphs above and incorporates them herein
by reference.

63. California Civil Code § 1770 (a) (22) (A) requires that all recorded
messages disseminated within the state be introduced by a live, natural voice
giving the name of the entity calling, the name of the entity being represented, an
address or phone number for that entity, and asking permission to play the
recording. Defendant's illegal prerecorded telemarketing calls to Plaintiff failed to
comply with this requirement.

64. As a proximate result of defendants' violation of Civil Code section
1770, plaintiff has suffered and continues to suffer damages in an amount not yet
ascertained, to be proven at trial.

65. Civil Code section 1780 (a) (2) provides for an injunction against
future conduct in violation of Civil Code section 1770.

66. Civil Code section 1780 (a) (4) provides for an award of punitive
damages for violations of Civil Code section 1770.

67. Civil Code section 1780 (d) provides for an award of attorneys fees
for plaintiffs harmed by California Civil Code §1770 (a) (22) (A) violations.

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FIFTH CAUSE OF ACTION

[Trespass to Chattel – All twenty-three (23) Calls]

68. Plaintiff re alleges all paragraphs above and incorporates them herein by reference.

69. The conduct by defendants complained of herein, namely illegally calling Plaintiff's phone, constitutes an electronic trespass to chattel.

70. At no time did Plaintiff consent to this trespass.

71. As a proximate result of these intrusions, Plaintiff suffered damage in an amount according to proof, but no less than 8% of his monthly phone bills in February and March of 2014 since Defendants calls constituted 8% or more of the total calls to his phone at the height of their junk calling campaign.

72. In making the illegal calls described above, defendants were guilty of oppression and malice, in that defendants made said calls with the intent to vex, injure, or annoy Plaintiff or with a willful and conscious disregard of Plaintiff's rights. Plaintiff therefore seeks an award of punitive damages.

SIXTH CAUSE OF ACTION

[Engaging in Unfair Business Practices – All twenty-three (23) Calls]

73. Plaintiff re alleges all paragraphs above and incorporates them herein by reference.

74. Because these telephone calls violate federal statutes, they are unlawful business practices within the meaning of section 17200 of the Business

1 and Professions Code.

2 75. As a proximate result of these intrusions, Plaintiff suffered damage in
3 an amount according to proof, but no less than 8% of his monthly phone bills in
4 July and August of 2013 since Defendants calls constituted 8% or more of the total
5 calls to his phone in the two months at the height of their junk calling campaign.
6

7
8 76. Section 17203 of the Business and Professions Code entitles Plaintiff
9 to an injunction enjoining defendants from engaging in unfair or unlawful business
10 practices.
11

12
13 WHEREFORE Plaintiff prays for judgment against defendants, and each of
14 them, as follows:

15 On the FIRST CAUSE OF ACTION:

- 16 1. For an award of \$500.00 for each violation of 47 U.S.C. §227;
17 2. For an award of \$1,500.00 for each such violation found to have been
18 willful;

19 On the SECOND CAUSE OF ACTION:

- 20 3. For an award of \$500.00 for each violation of 47 C.F.R. §64.1200 (c)
21 (2);
22 4. For an award of \$1,500.00 for each such violation found to have been
23 willful;

24 On the THIRDCAUSE OF ACTION:

- 25 5. For an award of \$500.00 for each violation of 47 U.S.C. §227;
26 6. For an award of \$1,500.00 for each such violation found to have been
27 willful;
28

1 On the FOURTH CAUSE OF ACTION:

- 2 7. For compensatory damages according to proof;
- 3 8. For preliminary and permanent injunctions, enjoining Defendants, and
- 4 each of them, from engaging in activity in violation of California Civil
- 5 Code §1770 (a) (22) (A);
- 6 9. For punitive damages;
- 7 10. For attorney's fees;

8 On the FIFTH CAUSE OF ACTION:

- 9 11. For compensatory damages according to proof;
- 10 12. For punitive damages;

11 On the SIXTH CAUSE OF ACTION:

- 12 13. For preliminary and permanent injunctions, enjoining Defendants, and
- 13 each of them, from engaging in unfair or unlawful business practices
- 14 pursuant to section 17203 of the Business and Professions Code;

15 On ALL CAUSES OF ACTION:

- 16 14. For attorney's fees pursuant to California Code of Civil Procedure §
- 17 1021.5.
- 18 15. For costs of suit herein incurred; and
- 19 16. For such further relief as the Court deems proper.
- 20

21

22 DATED: February 25, 2014

PRATO & REICHMAN, APC

23

24

25 /s/Christopher J. Reichman, Esq.

26 By: Christopher J. Reichman, Esq.

27 **Prato & Reichman, APC**

28 Attorneys for Plaintiff

PAUL SAPAN